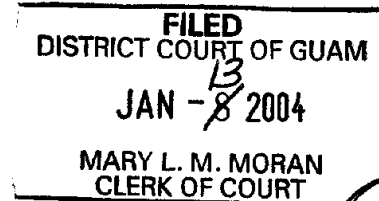


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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF GUAM**

12
13 **KAIOH SUISAN CO., LTD.**

14 **Plaintiff,**

15 **vs.**

16 **GUAM YTK CORP.,**

17 **Defendant.**

) **CIVIL CASE NO. 02-00021**
)
)
)

) **PLAINTIFF KAIOH SUISAN CO., LTD.'S**
) **REPLY MEMORANDUM IN SUPPORT**
) **OF RENEWED MOTION FOR**
) **SUMMARY JUDGMENT;**
) **MEMORANDUM; CERTIFICATE OF**
) **SERVICE**
)

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19
20 The Defendant GUAM YTK CORP. argues that "Plaintiff had added nothing to
21 its current motion to demonstrate that the factual disputes have been eliminated.", and
22 that the Order of April 4, 2003 remains the law of the case. In fact, several events,
23 filings and depositions have occurred since April 4, 2003, which put to rest any barrier
24 to the entry of judgment in Plaintiff's favor.
25

1 **A. FAILURE TO COMPLY WITH ORDER OF OCTOBER 9, 2003**

2 Defendant has failed to comply with the Court's Order of October 9, 2003 that it
3 file its Witness List and Trial Brief by October 14, 2003. These were not filed until
4 October 27 and 29, 2003, respectively.

5 **B. ADDITIONAL DOCUMENTATION**

6 In addition to the loan Agreement and wire transfer documentation, the
7 existence of which Defendant has admitted, Plaintiff submitted with its Trial Brief as
8 additional corroboration a letter by Defendant's President to the Chairman of the Board
9 of Plaintiff requesting to borrow 100,000,000 yen in two installments of 50,000,000 yen
10 each on December 5, 2000 and January 20, 2001, the same amounts and dates as
11 stated in the Agreement.
12

13 **C. WIRE TRANSFER LANGUAGE**

14 The Court held in its prior Order that the terms "advance payment" and "tuna" in
15 the applications for wire transfers rendered the written documentation ambiguous. If
16 any ambiguity existed, it was clarified by the deposition testimony of Shunsaku Yuasa
17 that these terms were there because Japanese law requires that some reason for the
18 transfer must be stated in the application and that if the term "loan" had been used it
19 would have required additional paperwork. Further, in his letter requesting the loan,
20 Defendant's President refers to "tuna fishing vessels" and that "a Tuna Forwarding
21 company was established with your cooperation." Since the purpose of the loan was
22 to allow Defendant to engage in a business involving tuna, it is only logical that the
23 term "tuna" appeared on the applications.
24
25

1 **D. IGNORANCE OF ENGLISH CLAIM**

2 In the initial Motion, Plaintiff cited the virtually universal rule to the effect that the
3 failure of one who voluntarily signs a contract to understand it does not render it
4 invalid. Defendant neither refuted this authority nor even addressed it.
5 Notwithstanding this, the Court found in its Order that Defendant's claim that Mr.
6 Kamiyama did not understand the Agreement raises a material issue of fact. The
7 Court also failed to distinguish, refute or even address this authority. Since the Court
8 has not passed on the issue, Plaintiff submits that its decision cannot be the law of the
9 case and that it can and should be reconsidered.
10

11 **E. BUSINESS LICENSE ISSUE**

12 In it's Reply to the Opposition to its initial Motion, Plaintiff cited the decision of
13 the Supreme Court of Guam in EIE Guam Corporation v. Long Term Credit Bank of
14 Japan, 1998 Guam 6, for the proposition that a one time loan of money by an off-
15 Island business to a business on Guam does not constitute doing business on Guam,
16 and, therefore, does not require a business license. In its Order, the Court stated that
17 the loan might not have been Plaintiff's only business on Guam, based on another
18 transaction by the parties in forming a Guam corporation known as Guam Kai Oh Co.,
19 Ltd., and that the reasoning in the EIE case may not apply. In its Trial Brief Plaintiff
20 argued that the fact that the parties entered into another transaction does not create a
21 business license defense as to this one because:

22 First, the other transaction was the formation of a Guam corporation, which
23 would be subject to and pay GRT.
24
25

1 Second, the only reason that there was no business license is that Mr.
2 Kamiyama, the President of Guam Kai Oh Co., Ltd., failed to obtain one and that, as
3 "local partner" it was his responsibility to do so.

4 And third, 11 G.C.A. §70130(g) provides that the failure of one party to have a
5 business license shall be an affirmative defense by any other party and that
6 Defendant, having failed to plead this, has waived it.

7 The Defendant, in its Trial Brief, neither refutes nor addresses any of these
8 arguments but does assert that the EIE decision is limited to banks. Even if this were
9 true, it would not affect the validity of these arguments, but it is not true in any event.
10 While the foreign entity in question in the EIE case was a bank and much of the
11 opinion dealt with statutes relating specifically to banks, the discussion as to the
12 applicability of the Business License Law did not limit itself to banks. It noted that the
13 law applies to "the business person" and not just banks.
14

15 Plaintiff would note that these arguments have all been raised since the Order
16 of April 4, 2003 and the Court has not made any ruling that could amount to law of the
17 case.

18 **F. CONTINUED FAILURE TO ARTICULATE ALTERNATIVE TO LOAN**

19 In its Trial Brief Defendant states that "the money transferred by Plaintiff to
20 Defendant was for an investment in their continuing fishing venture and that was what
21 the funds were used for." In its Opposition to this renewed Motion, Defendant states
22 "the money was for an investment by Plaintiff in a joint enterprise of the parties." This
23 is Defendant's entire attempt at articulating what the transaction was, if it was not a
24 loan. As now pointed out in two (2) Motions and a Trial Brief, there is absolutely no
25

1 allegation as to precisely what Plaintiff was getting in return for the dollar equivalent of
2 approximately \$816,000.00. Rule 56(e) requires Defendant to "set forth specific facts
3 showing that there is a genuine issue for trial." The conclusory allegations set forth
4 above do not come close to meeting this standard.

5 Respectfully submitted this 13th day of January, 2004.

6
7 **VERNIER & MAHER, LLP**
Attorney for Plaintiff
8 **KAIOH SUISAN CO., LTD.**

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10 BY:


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